IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6303 OF 1999

1. SHYAMKANT SITARAM JOSHI
Age 85 yrs.
Residing at 496/A, Kasba Peth,
Pune - 411 011.

2. MRS. MALATI MADHUKAR PANDE
Age 61 yrs.
Residing at 1152, Sadashiv Peth,
Pune: 411 030. ....Petitioners.

Versus

1. State of Maharashtra

2. Commissioner of Pune
Municipal Corporation.

3. Collector of Pune.

4. SLAO no.15, having his
office at Ghole Road,
Shivajinagar, Pune - 411 005. ....Respondents.

Mr. Prashant Beri i/b M/s. Beri & Co. for the petitioners.

Mr. R.G. Ketkar, for respondent No.2.

Mr. V.S. Gokhale, AGP for respondent Nos. 1, 3 and 4.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 17th August, 2005.

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. By this petition, petitioners are challenging the Notification issued by the Pune Municipal Corporation dated 18/11/1972 under section 126 sub-clause (2) of the Maharashtra Regional Town Planning Act and the

Award dated 7/10/1978.

2. Brief facts which are relevant for the purpose of deciding this petition are as under:-

3. The land in question, initially, was reserved by the respondents for the purpose of hospital vide Notification dated 29/8/1960 under section 126(2) of the Maharashtra Regional Town Planning Act, 1966 (For short "M.R.T.P. Act") read with section 6 of the Land Acquisition Act, 1894. This Notification for acquisition of land for hospital purpose was subsequently cancelled and, thereafter, petitioners were informed by the respondents by letter dated 29/07/1970 that the said land is reserved for children's play-ground. Thereafter, Notification vide No.TPS/36 dated 11/11/1972 was issued by respondents and, finally, an award was declared on 07/10/1978.

4. Initially, the award was challenged by some of the tenants who were residing in the said property by filing a suit. This suit was dismissed on 15/04/1988 and, thereafter, notice was issued to the petitioners on 13/5/1993. Petitioners, thereafter, filed a civil suit on 17/05/1993 bearing No. 938 of 1993. This suit was also dismissed on 08/12/1998. Thereafter, an

application was preferred by the petitioners in which, inter alia, it was contended that purpose for which the land was reserved was no longer available to the Corporation and, therefore, the Corporation should lift the reservation. When the Corporation declined to lift the reservation, the present petition has been filed under Articles 226 and 227 of the Constitution of India.

5. Respondents have filed their affidavit-in-reply in which it is contended that the Petition is hopelessly time barred as the award was passed on 07/10/1978. A suit was initially filed by the petitioners which was dismissed on 08/12/1998. It was averred in the said affidavit in reply, therefore, that the Petition was liable to be dismissed on the ground of delay and laches. It was further contended in para IV of the affidavit-in-reply that the land was initially reserved for children's play-ground in the draft revised development plan and the Government had granted sanction to the said plan on 05/01/1987. Thereafter, so far as CTS No.825 was concerned, reservation for children's play-ground was continued under the sanctioned plan of 05/01/1987. Further particulars about other CTS numbers were mentioned in the said paragraph.

6. The learned Counsel appearing on behalf of the petitioners submitted that the land in question was no longer required for the purpose for which it was reserved as more than 21 years had elapsed and taking into consideration the changed circumstances relating to the location of the said land in the crowded area, the reservation was liable to be lifted. It was further contended that the market value of the land is enhanced and if the land was acquired, the petitioners would suffer sizable loss. It was submitted that there were 11 old tenants who were residing in the said land alongwith their families and if the land was acquired, serious prejudice would be caused to the tenants in the said land.

7. In our view, submissions made by the learned counsel appearing on behalf of the petitioners cannot be accepted. The land in question was admittedly reserved for the children's play ground and, therefore, under section 125 of the M.R.T.P.Act, the land was reserved for public purpose. Thereafter, a notification was issued under section 126 and an award was passed on 07/10/1978. Once the award was passed, the land vested in the Corporation and it will not be possible to accept the contention of the petitioners

that the object for which the land was reserved was no longer available. It would not be open for the petitioners to challenge the award on this ground as the award was already declared on 07/10/1978. Apart from that, petitioners are challenging the award by filing this petition in the year 1999 i.e. after lapse of almost 21 years, after the award was passed. Further, the petitioners before filing this petition, had challenged the award by filing a suit which suit was also dismissed in 1998. On the ground of gross delay and laches also, in our view, it is not possible to interfere with the award which is passed in the present case.

8. We do not see any merits in the submissions made by the learned Counsel for the petitioners. Accordingly petition is dismissed. Rule is discharged with no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)